

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT

and

SAN DIEGO REGIONAL CENTER

OAH No. 2019040968

OAH No. 2019070568

DECISION

Theresa M. Brehl, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 3, 2019, in San Diego, California.

Claimant's conservator, who is also claimant's mother, represented claimant. Claimant was not present during the hearing.

Ronald R. House, Attorney at Law, represented San Diego Regional Center (SDRC).

The record was held open until October 1, 2019, to allow the parties to do the following: (1) Claimant was given until September 17, 2019, to submit a motion to compel SDRC to produce records and/or for sanctions; (2) claimant was given until

September 24, 2019, to submit additional exhibits; and (3) SDRC was given until October 1, 2019, to oppose any motion to compel and/or for sanctions and to submit written objections to any additional exhibits claimant submitted.

Claimant did not file a motion to compel or a motion for sanctions.

On September 24, 2019, claimant submitted additional exhibits. SDRC did not submit any written objections, and claimant's additional exhibits were admitted into evidence on October 1, 2019.

The record was closed, and the matter was submitted for decision on October 1, 2019.¹

ISSUES²

1. Did SDRC properly discontinue funding Independent Living Skills (ILS) services in March 2019?

¹ On October 1, 2019, claimant submitted a motion to exclude an exhibit that had already been entered into evidence at the hearing, raising the same arguments she raised during the hearing. On October 2, 2019, claimant submitted additional exhibits. On October 2, 2019, an order was issued denying claimant's motion to quash, rejecting the exhibits submitted on October 2, 2019, and reminding the parties that because the record closed on October 1, 2019, no further exhibits would be accepted.

² Claimant submitted two fair hearing requests and two Office of Administrative Hearings cases were opened. The parties' joint consolidation motion was granted at

2. Should SDRC continue to fund ILS services at the same level as was in place in May of 2018?

3. Should SDRC reimburse claimant for wages paid to an independent worker in the interim?

4. Should SDRC continue to fund ILS services at the previously approved level of 140 hours per month or reduce ILS services to 27 hours per month?³

5. Should SDRC continue to fund respite services at the previously approved level of 100 hours per month or reduce respite services to 40 hours per month?

6. Should additional documents be provided by either party?⁴

the hearing, and it was then decided that a single decision would be written, addressing the issues raised in both cases.

³ This issue is duplicative of Issue 2.

⁴ Both parties contended that, in response to subpoenas they served on each other, they either did not receive any documents or they did not receive a complete production of documents. Neither party filed a motion to compel before the hearing. The parties agreed that one of the issues to be decided would be whether additional documents were needed to determine the substantive issues in this matter, and that the administrative law judge would notify the parties if additional records were necessary to render this decision. No additional documents are needed to decide this matter.

Another issue raised by one of claimant's requests for fair hearing was whether claimant's mother could serve as claimant's service coordinator. However, at the end of the hearing, claimant withdrew her request that her mother be allowed to serve as her service coordinator.

SUMMARY

Based on the evidence presented, the issues raised are decided as follows: Additional documents are not necessary to decide this matter; SDRC did not inappropriately discontinue funding ILS services, although there has been a gap in the provision of such services due to an ILS vendor's decision to cease providing such services and difficulty securing another vendor willing to provide ILS services to claimant; claimant's request for reimbursement of wages paid to independent workers is denied; claimant's ILS hours are reduced to 27 hours per month; and claimant's respite hours shall remain at 100 hours per month.

FACTUAL FINDINGS

SDRC's Notices to Claimant and Claimant's Requests for Fair Hearing

FIRST FAIR HEARING REQUEST (OAH CASE. NO. 2019040968)

1. On February 11, 2019, SDRC sent a letter to claimant's mother which stated:

I have been trying to contact you by email without any success. Per Regional Center guidelines, it is imperative that we meet in person to discuss [claimant's] Annual Review

which is currently due. SDRC is unable to fund services without a current signed Annual Review. If I do not meet with you, [claimant] and the ILS Agency, including persons doing the direct services by February 28, 2019, I will inactivate [claimant's] case with the Regional Center on 3/31/2019, and assume you are in agreement with SDRC funding of [claimant's] services being discontinued. You may re-activate [claimant's] case by calling our intake Department. . . .

2. On April 22, 2019, claimant submitted a Fair Hearing Request, listing the reason for seeking a hearing as:

SDRC has unilaterally discontinued direct instruction of ILS (Independent Living Services) and my daughter, [claimant] has regressed in skills needed to be an independent adult.

The April 22, 2019, Fair Hearing Request proposed the following resolution:

To be provided the continuation and same level of ILS services that were in place since May 2018, and for reimbursement of wages paid to and [sic] independent worker by the conservator in the interim.

SECOND FAIR HEARING REQUEST (OAH CASE No. 2019070568)

3. On July 10, 2019, SDRC issued a Notice of Proposed Action (NOPA) which stated the following proposed action:

Deny request to have [claimant's mother] become [claimant's] service coordinator. Reduction of ILS to 27 hours per month and respite to 40 hours per month based on recent assessments.

The NOPA gave the following reasons for the proposed action:

ILS and Respite assessment indicate a reduction of hours is needed. [Claimant's mother] is not an appropriate choice to become [claimant's] service coordinator.

4. On July 15, 2019, claimant submitted a Fair Hearing Request that stated the reason for seeking a hearing was, "I do not agree with NOA dated 7-10-2009." The Fair Hearing Request described what was needed to resolve the request as "[t]o maintain level of services continuation aid paid pending."⁵

Definitions of ILS, SLS, and Respite

5. This case concerns SDRC's funding of ILS and respite services while claimant lived with her mother and prepared to live independently with the aid of Supported Living Services (SLS). SDRC's Purchase of Service Standards define ILS, SLS, and respite as follows:

- ILS "focuses on functional skills training for adults which enables each individual to acquire or maintain skills to live independently or to achieve greater independence within his/her home. Teaching is focused on

⁵ As was noted above, claimant withdrew her request to have her mother serve as her service coordinator.

teaching the individual to complete household tasks, such as cooking, cleaning, bill payment, and laundry on their own and is not intended for self care or as respite for the parent or family member. Such training is provided in the adult person's own home or in the home of a parent, family member, or other person."

- SLS "are services and supports provided by agencies or individuals that support an adult's efforts to live in his/her own home, maintain a household, actively participate in his/her community, advocate for him/herself, pursue personal interest, and become as self-reliant as possible. SLS are generally highly intensive services available on a 24-hour basis and are based on the individual needs of the consumer and may be provided for as long as needed."
- Respite "refers to the provision of intermittent or regularly scheduled temporary care to persons who require care and supervision, which exceeds that of an individual of the same age without developmental disabilities. Respite is one of an array of family support services that assists the family to maintain the client at home; provides appropriate care and supervision to protect the client's safety in the absence of family members; relieves family members from the constantly demanding responsibility of caring for a client; and attends to the client's basic self-help and other activities of daily living while the family member is using respite services. . . ."

Claimant's Background and Services SDRC Funded in Anticipation of Claimant Living Independently

6. Claimant is a 23-year-old conserved woman who lives with her mother and receives regional center services based on a diagnosis of Autism Spectrum Disorder.

7. During a 2017 meeting to review claimant's Individual Program Plan (IPP) outcomes, claimant's mother told SDRC she planned to move out of their home so claimant could live independently with the support of an SLS worker. At the time, SDRC had been funding respite services, and SDRC explained that after claimant began receiving SLS, SDRC would no longer fund respite services because claimant would be living on her own.

8. Claimant's mother was given a list of SLS programs, and in November 2017, SDRC personnel met with claimant's mother regarding claimant's request to receive SLS from SDRC vendor Ideal Care Supported Living Services (Ideal Care). Claimant was then receiving 30 hours per month of respite services and 74 hours per month of In-Home Supportive Services (IHSS). Claimant's mother was still living with claimant, but claimant's mother represented that she planned to move out on December 1, 2017. SDRC then approved 80 hours of ILS services for the month of December 2017 to assist claimant and her mother until SLS was in place or other arrangements were made.

9. Ideal Care, which provided ILS services to claimant during 2017 and early 2018, prepared an Individual Support Plans (ISPs) regarding claimant's goals and the ILS and/or SLS services Ideal Care proposed providing to claimant. Another vendor, A Better Life Together, Inc. (A Better Life), prepared a Supported Living Services

Assessment in October 2017. The documents prepared by Ideal Care and A Better Life did not recommend any specific numbers of hours of such services.

10. After claimant's mother informed SDRC on December 29, 2017, that claimant had "been getting up in the middle of the night and trying to use the gas stove, going outdoors in the back yard, etc.," SDRC authorized an additional 40 hours of ILS services from January 1 through 16, 2018.

11. On January 9, 2018, SDRC authorized an additional 40 hours of ILS services until January 31, 2018. On January 11, 2018, SDRC notified Ideal Care that claimant would be temporarily receiving 100 ILS hours for the month of January 2018.

February 2018 IPP

12. Claimant's February 2018 IPP noted claimant was still living with her mother, and no changes were then desired. At that time, claimant was still attending school and receiving special education services, including a one to one aide, career services, individual counseling, and speech and language therapy. Claimant enjoyed watching movies and You Tube videos, playing video games, reading fairy tales, walking, and playing with a "twiggy" stick. Claimant displayed tantrums, darted into the street, and exhibited impulsive behaviors. She hit animals, had shaken a pet rabbit to death, and engaged in aggressive behavior approximately two times a week.

13. The IPP further stated that claimant needed prompting to complete most hygiene and grooming; she could not safely bathe herself independently; she needed physical assistance to get soap out of her hair, brush her hair, floss and brush her teeth, apply deodorant, and clean herself after using the toilet; she was able to dress herself with some help with buckles, buttons, and ties, but she needed help choosing weather-appropriate clothing; she relied on others to cook food, although she could

get snacks on her own; she needed supervision "at all times in the kitchen" for safety reasons; and she needed help with laundry and stripping/remaking her bed. Because claimant also suffered from Tourette's Syndrome, she blurted out words and cursed, and her voice was sometimes "too loud, yelling or dramatic for the situation." Claimant had a limited understanding of the value of money and needed assistance with budgeting, bill paying, and small purchases.

14. At the time of the February 2018 IPP, Claimant's mother wanted claimant to become more independent, and claimant wanted to develop employment skills. Among claimant's goals were to become more independent, transition into adulthood, and look for a place to live. Long term supports, including ILS and SLS were discussed. According to the IPP, claimant was then receiving "a high level of ILS hours to support growth and independence. Eventually, [claimant's mother] would like [claimant] to participate in supported living. Team agreed that this could be a beneficial service to [claimant] but will not be implemented until she is living without family in the home."

ILS Service Provider Changes During 2018

15. During early 2018, Ideal Care gave notice it would no longer provide ILS services to claimant because Ideal Care had learned the ILS Note Logs had been modified and claimant's mother had been writing the ILS Note Logs. On May 22, 2018, claimant's mother requested that the ILS vendor be changed to Unlimited Options Inc. (Unlimited Options) effective June 1, 2018, and that Ideal Care's last day be May 31, 2018.

16. Unlimited Options took over as the ILS provider and prepared ISPs during 2018, but it did not estimate the number of ILS hours claimant needed.

17. As of July 2018, SDRC approved the following hours of services through September 30, 2018: 140 hours per month of ILS services provided by Unlimited Options; 10 hours of respite per month provided by Home of Guiding Hands (HGH) Respite; and 90 hours of respite per month provided by YMCA.

November 19, 2018, Meeting

18. On November 19, 2018, SDRC met with claimant and her mother to review claimant's IPP outcomes. SDRC issued an IPP Addendum as a result of that meeting. At that time, claimant was living with her mother, but claimant still planned to someday move into her own apartment with supported living services. Claimant was then working on learning independent living skills, including stranger awareness. Claimant was also waiting to be accepted in an adult day program at St. Madeleine Sophie's Center (St. Madeleine's).

19. During the meeting, SDRC conducted a respite needs assessment using a "Respite Needs Assessment Summary Sheet" as a guide to determine the appropriate number of respite hours. That assessment took into account claimant's age, medical needs, activities of daily living, mobility, emotional/behavioral needs, safety/supervision, family situation, and daily program attendance, and resulted in a total score of "25." According to the "Hourly Rate Respite" chart on the Respite Needs Assessment Summary Sheet, a score of 25 to 30 indicated the amount of respite or "routine supervision" needed would be 31 to 40 hours per month, with a maximum of 120 hours per quarter. The chart also noted that 41 or more hours per month could be approved based on individual need and regional manager review.

20. At the November 19, 2018, meeting, which SDRC's East County Regional Manager attended, SDRC agreed to continue to fund 140 ILS service hours per month

and 100 respite hours per month. The IPP Addendum stated: “[Claimant] will continue to receive 140 hours of ILS services and 100 hours of respite. These hours will be revisited when [claimant] gets into a day program and/or into her own apartment with supported living.”

21. Claimant’s mother sent an email to SDRC, dated December 3, 2018, following up after the November 19, 2018, meeting, in which she stated, in part:

[Y]ou conceded to continue the services as-is and I gave you my drafted IPP and asked you to include it in the end.

My daughter was interviewed by Mr. Brown [SDRC East County Regional Manager] and I’m happy that you were able to witness her progress in using the ILS assistance. That you also saw her regression traits of hitting me, talking off-topic and describing the time she left the house at midnight to walk around the block, as well as darting in front of a car that morning of 11/19/2018. . . .

Family’s Draft IPP

22. An untitled document, referred to by SDRC as the “Family’s Draft IPP,”⁶ was received into evidence. That document described claimant as “extremely friendly and does best in a structured environment with routine.” That document also stated that claimant wanted to “[g]et her own apartment & have a roommate, get a

⁶ This document appeared to be the “drafted IPP” claimant’s mother referenced in her December 3, 2018, email.

boyfriend. Have friends to go out to restaurants & maybe get a tattoo.” The following safety concerns were also raised:

[Claimant’s] safety awareness is poor. She requires constant supervision in all settings in case she gets in trouble or engages in risky behaviors. [Claimant] has improved her awareness of street safety with ILS services. Her stranger awareness is still weak evidenced by her constant chatter with strangers. Not able to lock the doors.

SDRC’s February 2019 Threats to Inactivate Claimant’s Case

23. Claimant’s mother told SDRC on several occasions that she did not think it was necessary to meet in person and she preferred to communicate by email.

24. On February 11, 2019, SDRC sent a letter to claimant’s mother attempting to schedule an annual meeting. That letter, which prompted claimant’s first (April 22, 2019) fair hearing request, stated that if such a meeting did not take place, claimant’s services would be inactivated effective March 31, 2019.⁷

25. In response, claimant’s mother sent an email to SDRC on February 14, 2019, stating she did not think a meeting was necessary because claimant was only scheduled for an IPP every three years.

26. SDRC responded on February 19, 2019, with an email that stated (emphasis in original):

⁷ The letter was quoted in paragraph 1, above.

[Claimant's] IPP is on a triennial schedule, thus the "full" IPP only needs to be completed every three years or as necessary. However; below are summarized sections of the law:

1. Per the Lanterman Act Regulations Title 17 Section 58680(a)(2)⁸ the Regional Center *shall* conduct quarterly face-to-face meetings with the client and, when appropriate, the client's personal advocate. The section goes on to state that the meetings *shall* occur in the client's home. This means that SDRC is required to meet with [claimant] in person 4 times per year (every 3 months) in the home in which she resides. SDRC's scheduling is based on the individual's birth month. [Claimant's] birthday was in January which means that an Annual Review of the IPP is needed. The quarterly and annual meetings include assessing for any changes in [claimant's] needs and reviewing the outcomes, services, supports, etc. Since this is an Annual Review, a full IPP document is not required to be completed, but an addendum to the IPP may be needed.

⁸ California Code of Regulations, title 17, section 58680, concerns monitoring and evaluating an SLS vendor's provision of services. It does not mention ILS or respite services. SDRC did not explain why this particular regulation would apply to claimant's situation when she was not receiving SLS.

2. Additionally, the Lanterman Act Regulations Section 58680(a)(1) states that the Regional Center *shall* assure that the Welfare & Institutions Code Section 4689(e)(1) through (5)⁹ are met. This means that quarterly, SDRC is required to monitor and ensure that quality of [*sic*] services and supports are provided. This specifically includes reviewing the services and supports; assessing the effectiveness of such services and supports; and assessing for client satisfaction regarding these services and supports.

3. Quarterly, Annual, and IPP meetings (among others) all involve the Planning Team. The Lanterman Act Section 4512(j) defines the planning team as including the individual with developmental disabilities, the legally appointed conservator, SDRC representative, and the service provider.

In summary, to continue providing services and supports, SDRC is required to meet face-to-face with an individual

⁹ Welfare and Institutions Code section 4689 concerns SLS and does not mention ILS or respite services. In particular, subdivision (e) addresses monitoring and ensuring “the quality of services and supports provided to individuals living in homes that they own or lease.” SDRC did not explain why this section would apply to claimant’s situation when she still lived with her mother and was not receiving SLS.

living independently¹⁰ (with or without services) in the home where the individual resides 4 times per year as part of the planning team. The meetings are to review, assess, and assure that appropriate services are being delivered in accordance with the law and the individual's IPP outcomes, ensuring they meet the individual's current needs.

Per your attached email, you recently received a letter from SDRC requesting that a meeting with [claimant], Unlimited Options, [claimant's] direct service provider, the conservator, and SDRC be held by February 28, 2019. The letter stated that if the meeting does not occur within that time, a Notice of Action to inactivate [claimant's] case would be issued resulting in services being eventually discontinued. Per the requirements outlined above, the request for a meeting and information regarding the Notice of Action included in that letter will be supported by SDRC.

27. Despite the threats made in the February 11 and 19, 2019, letters, SDRC did not inactivate claimant's case or discontinue funding services. SDRC also did not issue a Notice of Proposed Action (NOPA) stating that claimant's case was being

¹⁰ As is noted throughout this decision, claimant was not living independently and continued to live with her mother. It was unclear why SDRC relied on the law cited in this letter, which would apply to a consumer living independently.

inactivated.¹¹ Instead, SDRC honored claimant's requests to change respite service providers, continued to fund respite services, worked with claimant to replace ILS vendor Unlimited Options when that vendor gave notice it would no longer be providing claimant's ILS services, and funded an assessment regarding the recommended hours of ILS services claimant needed.

Claimant's Request to Change Her Respite Service Provider

28. On February 19, 2019, claimant's mother notified SDRC that claimant wanted to stop receiving respite services from SDRC vendor YMCA to instead receive those services from 24Hr Homecare. SDRC contacted 24Hr Homecare that day. 24Hr Homecare then agreed to provide the respite services, SDRC submitted a purchase of service (POS) for 24Hr Homecare to provide the respite services, and 24Hr Homecare started providing the respite services.

Unlimited Options Gives Notice that It Would No Longer Provide ILS Services to Claimant

29. On February 28, 2019, Unlimited Options sent a letter to SDRC which stated:

Unlimited Options received your text that [claimant's] ILS worker [claimant's brother] would be living with [claimant]

¹¹ It should be noted that there were internal SDRC emails referencing the preparation of such a NOPA, but the only NOPA submitted to the Office of Administrative Hearings was dated July 10, 2019, and concerned reduction of ILS and respite service hours, not inactivation of claimant's case.

as of March 1, 2019. Unlimited Options acknowledges that in order to remain within SDRC ILS guidelines, Unlimited Options is providing notice of conclusion of services.

Unlimited Options does not have an ILS worker that can assume [claimant's] case.

30. Claimant's mother sent an email to SDRC on March 1, 2019, that stated:

Also, I'm aware of ILS & respite guidelines and last week, I reported to Unlimited Options that our son, [claimant's brother] may be moving into our home next month.

Unlimited did not have other employees, so they canceled our contract. We shall procure another agency and let you know. The new respite agency will also have to get another employee to do the services, should our son move in.

31. On March 4, 2019, SDRC sent an email to claimant's mother regarding other service agencies, which stated:

Also, I will have Debbie [claimant's service coordinator] send you a list of other agencies. Since the plan is to eventually have [claimant] move into supported living, I will have her send you a list of agencies that provide both independent and supported living services. That will assist in speeding up the process and will remove the need to change agencies when [claimant] is ready to transition from independent living into supported living.

32. On March 8, 2019, and again on March 11, 2019, claimant's mother notified SDRC by email that claimant wished to use TLC Social Services, LLC (TLC) as the ILS service provider and asked that a POS and collateral package be sent to TLC. On March 11, 2019, SDRC communicated with TLC's director and sent the collateral to her. On March 12, 2019, SDRC notified claimant's mother that the collateral had been sent to TLC and SDRC was waiting to hear from TLC to confirm that it would work with claimant.

33. On March 19, 2019, TLC notified SDRC that it was concerned about hiring a person named "Gigi" who claimant's mother had requested be hired to be the worker to provide ILS services to claimant. TLC was also concerned about how to monitor claimant's progress. Because Gigi spoke very little English, and did not write in English, it would be difficult for TLC's staff to know what was going on if they did not speak or read in Spanish. Claimant's mother had told TLC not to worry about it, as she would handle the communications. TLC was also worried it would not have staff to cover the hours claimant's mother requested. TLC's director told SDRC that TLC was going to review the case again and would let SDRC know whether it wanted to take the case. There was no evidence presented regarding whether TLC agreed to take the case.

34. On March 27, 2019, Unlimited Options notified SDRC that claimant's mother asked Unlimited Options to continue providing the ILS services using Gigi as the ILS worker. Unlimited Options told SDRC that Gigi only spoke and wrote in Spanish and that hiring her would not work for Unlimited Options.

35. On April 7, 2019, Unlimited Options sent a letter to SDRC that included lists of the tasks that claimant worked on during December 2018, January 2019, and February 2019. The letter then stated:

[Claimant] required verbal and physical prompts, redirection, modeling, pictorial guides, demonstration, video demonstration, auditory and food reinforcement and finger stress exercises, [sic]

Barriers to progress included [claimant] eating her deodorant, practicing pet safety, emotional outbursts, temper tantrums, decreased memory of tasks and steps when completing objectives, darting into traffic, leaving her home without a plan and informing her Life Skill Counselor, night time bed wetting, assistance feeding herself, grinding her teeth, seizure activity, easily distracted and teasing when crossing the street and using bleach safely when doing her laundry.

Unlimited Options was informed that [claimant's brother], [claimant's] Life Skill Counselor (LSC) would be living in the same home with [claimant] as of March 1, 2019. Due to the unavailability of an alternative LSC Unlimited Options concluded services.

36. Claimant argued during the hearing that Unlimited Options's representation that it could no longer provide ILS services because it did not have a worker to provide the services was untrue. Claimant's argument appeared to be based on her mother's suggestion that Unlimited Options could have hired Gigi. However, even if the reason Unlimited Options gave for its decision to stop providing services to claimant was "untrue," SDRC did not have the power to force Unlimited Options to hire Gigi or to provide services to claimant if Unlimited Options declined to do so.

DK Independent Living Services Inc.

37. On April 3, 2019, claimant's mother notified SDRC that she had selected a new ILS agency, DK Independent Living Services Inc. (DK). SDRC then contacted DK and explained that SDRC would expect DK to go into the home with staff, get progress reports, and complete semi and annual reports. After DK asked SDRC why claimant had so many ILS hours and suggested that a new assessment be completed, SDRC prepared a POS for DK to conduct an assessment.

38. On April 17, 2019, SDRC communicated with DK's director about the status of the assessment. The Consumer I.D. Notes stated the following about that conversation:

SC spoke to Shelly [*sic*] at DK - she had just come from [claimant's] home trying to complete the assessment of [claimant] for ILS services. She stated that [claimant's mother] did not give the correct address of the mobile home. When Shelley finally arrived at the correct spot [claimant's mother] would not let her sit down, and [claimant's mother] stood over her the entire time telling her what to write in her assessment. [Claimant's mother] also told her that she never come [*sic*] to a meeting for [claimant] with SDRC. She asked Shelley if she was willing to work with [claimant]. She stated that she thought [claimant] had a lot of potential and she would love to work with her. At this point Shelly [*sic*] still has to complete her assessment.

39. On May 21, 2019, DK's director reported to SDRC that she met with claimant and her mother again that day and was working on the assessment. Claimant's mother also sent an email to SDRC that day which stated:

By way of this email, I am writing to inform you that Shelly [sic] from DK Independent Services was trembling upon arrival to execute my daughter [claimant's] final assessment. She told us that someone from San Diego Regional Center had called her and told her she would be subpoenaed. She announced that she hasn't even finished her report and already was being forced to have a three-day full assessment by this Friday. She stated that this has never happened to her before and the anxiety was evidenced to our current ILS worker Cielo as well as myself.

Shelly [sic] proceed [sic] to ask many questions of me as usual and sat down with [claimant] for 5 minutes before bolting from our home.

This was very disconcerting to us.

40. After SDRC received claimant's mother's May 21, 2019, email, SDRC contacted DK's director. The following is what DK's director then told SDRC:

She stated that [claimant's mother] asked her as soon as she arrived if she had received a subpoena. Shelley told her that someone from SDRC called her, but she did not tell her who. [Claimant's mother] continued to rush Shelley, but Shelley was there 1 hour and 15 minutes before [claimant's]

mother stated, "we have to go out for Thai food," and left. She told Shelley that if she only gave her 16 hours, she could reject the hours. Shelley stated that she would still complete her assessment and turn it in by Friday.

41. DK's director completed DK's written assessment on May 31, 2019, after three visits with claimant in her home. The assessment went through the following categories of activities and noted whether claimant could independently perform them, whether claimant was assisted when performing them, or whether they were performed by others: budgeting, banking, paying bills; social security administration and income; communication and phone skills; time and appointments; household emergencies/home security; shopping; food handling; kitchen appliances; kitchen utensils/cooking skills; kitchen/dining room cleaning; bathroom cleaning; laundry and linens; general household cleaning/maintenance; hygiene basics; dental hygiene; medical/health maintenance; medications/dispensation; general safety; transportation; employment/occupational day program; outings; relationships; circle of support/activity; sexual health and safety; and self-advocacy. The assessment also included detailed comments regarding the assessor's observations, what claimant and/or her mother told the assessor, and specific skills claimant might be taught to help her live more independently.

42. On the page of the assessment entitled "Independent Living Services Breakdown of Hours," DK determined that the number of ILS hours claimant needed per month was 27.¹² DK's director also included the following note: "I feel at this time,

¹² Although claimant argued that SDRC somehow directed DK to reduce the number of ILS hours DK recommended, the email claimant pointed to in support of

my agency will not be taking the case.” Under comments, she explained further (punctuation quoted as in original):

This, assessment was not a typical assessment. I felt rushed I was not given any one on one time with [claimant]. With a normal assessment, I spend a lot of time interviewing the client with family input. With this assessment it was the other way around. [Claimant] was always present but was kept busy or there were other appointments planned. When I did get to speak to [claimant] I had about 5 minutes and she was motioned to go by mom. This agency feels the inpiedment [sic] they would receive from [claimant’s] mom would not be condusive [sic] to aiding [claimant] to be successful. I felt [claimant’s mother] was less than candor [sic]. Most times stories always changing and she was very adamant I hire only who she wanted. This agency will not be taking this case, thank you for the consideration.

The AcademiCognitive Connections Assessment

43. At claimant’s mother’s request, AcademiCognitive Connections (ACC) prepared an assessment report, dated September 14, 2019. According to that report, the assessment was conducted on August 5, 20, and 21, and September 2, 6, and 10, 2019. The ACC report noted that claimant was then living with a roommate and her

that argument reminded DK that the assessment should concern ILS service hours as opposed to SLS hours. There was no evidence presented that SDRC directed DK to recommend a reduction in the hours.

mother, and she was on a waiting list to attend St. Madeleine's day program. The ACC report included an assessment of claimant's functional living skills and stated that claimant required further support and assistance in all the areas assessed.

44. The ACC report described claimant's strengths and weaknesses as follows:

Strengths:

[Claimant] is a friendly and outgoing young woman who enjoys socializing with everyone she meets. She is very complimentary with others and has a great sense of humor. She is very artistic and has great empathy for people and animals. [Claimant] is very active and likes being out in the community doing things she enjoys such as going to the beach, swimming, getting her nails done, and going to the movies with her friends. She loves meeting new people and indicates she would like to try new activities when she can explore new things and meet more people her age with similar interests. [Claimant] wants to maintain her health and is learning to do that. With support, she tidy's [*sic*] up her own bathroom, makes her bed, sweeps the floor, does her laundry and washes her dishes. She can tell time on a digital clock and can use the microwave to cook simple meals. She can identify dollar bills from \$1 to \$20 and independently makes purchases using her debit card.

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Weaknesses:

[Claimant's] cognitive weaknesses and significant issues with executive functioning, inattention, memory deficits and weak pragmatic skills impact her skills in all areas of functional/independence/adaptive skills: Organizational Skills, Self-Care, Maintenance & Cleaning, Mechanics & Repairs, Community Travel, Transportation, Kitchen Tools & Appliances, Food & Meal Planning, Money Management, Independent Shopping, Personal Management, Safety, Problem Solving, Social Interactions, Living with Others, and Interpersonal Relationships.

One of the greatest concerns is [claimant's] safety skills. [Claimant] does not understand the concept of stranger danger and struggles to understand perspective and intent of others, which can lead to dangerous situations for her. [Claimant] does not consider possible dangerous consequences of her actions such as walking to the convenience store alone in her night gown. She does not know her home phone number or address, and if lost, does not know who to go to for help or who is a safe person to approach for help. In the kitchen she does not know how to properly and safely work a stove or properly handle food without adult supervision.

Other areas of great concern are [claimant's] lack of money management, problem-solving, and personal management

skills. [Claimant] does not yet grasp the concept of staying within budget when shopping, is unable to pay her own bills, and is not able to identify marketing schemes or swindles. [Claimant] needs to be taught to consider the most appropriate way to resolve a given situation. She also continues to struggle to remain in control of her emotions when presented with difficult situations.

45. Under "Recommendations," the ACC report stated that "it is crucial to [claimant's] progress in acquiring independent living skills to maintain the same level of support she is currently receiving," including continuing ILS at 140 hours per month and respite at 100 hours per month. The report did not independently assess, calculate, or provide any recommendations regarding the number of ILS or respite hours claimant needed other than stating that the hours should remain the same.

46. The report noted that claimant was "overly dependent on adult prompting" and recommended that claimant's "entire support team should be trained by a Board Certified Behavior Analyst (BCBA) to help them implement ABA teaching strategies and should be supervised by a Board Certified Behavior Analyst (BCBA) to enforce consistency and fidelity strategies." The report further stated claimant may benefit from wraparound services and a day or comparable program that focusses on vocational and work training skills. Due to claimant's trusting nature and her inability to recognize potential dangers, the report also stated, "it is imperative that she has a one-on-one attendant accompany her in the community at all times to ensure her safety."

47. The ACC report recommended that claimant and all her staff and immediate family members receive the following training and services from a BCBA:

- Training for all staff and family as follows:
 - Initially for the first three months a total of at least 8 hours monthly: At least 2 hours per week of training for all staff and immediate family members in instructional strategies such as Task Analysis, Data Collection, Chaining, Prompting, Shaping, and other necessary strategies.
 - For the following nine months until annual review of goals a total of at least 5 hours monthly: At least 3 hours monthly as recommended for maintenance and supervision of staff/family skills, in addition to 2 hours monthly for new skills training. Maintenance and supervision of staff/family skills is required to analyze and enhance staff/family skills for correct implementation of strategies. As [claimant's] repertoires of experiences increase areas of weakness will emerge in various ways and her team will need new skills training as situations arise.
 - Staff turnover rate is approximately 30% and should be taken into consideration. New skills training is recommended to be available as needed and as stated above to new team

members as they become part of [claimant's] support team.

- [Claimant] also requires at least 1-hour per day (Monday-Saturday) or 28-hours monthly of direct services from a BCBA to help her develop areas of weakness as mentioned in this assessment. [Claimant's] challenges with executive functioning skills, memory, inattention, and social cognitive skills highly impact her ability to acquire new skills and maintain her skills across various settings and situations. She requires research-based techniques that are effective for her individual needs and need to be provided by a professional such as a BCBA with experience with individuals with autism.

48. The BCBA services ACC recommended appeared to fall into the category of "Behavior Intervention Services" described in SDRC's Purchase of Service Standards. There was no evidence presented that claimant had previously sought such services or that SDRC had ever denied a request for such services. Therefore, whether claimant may be eligible for Behavior Intervention Services, or similar services, is outside the scope of the issues to be decided in this matter.

St. Madeleine's Day Program

49. As of the date of this hearing, claimant was not yet attending a day program. She had attempted to enroll in a program at St. Madeleine's, but she had not

yet been accepted and/or enrolled. The following is a summary of the efforts made to enroll claimant in a day program at St. Madeleine's:

- On November 20, 2018, St. Madeline's notified SDRC that claimant had been accepted into its Activity Center (AC) program, but that she could not start until January 2019, and there may not be transportation available.
- On February 20, 2019, claimant's mother notified SDRC by email that claimant had an appointment at St. Madeline's and claimant was "excited to begin as soon as possible. Soon after, we can adjust the ILS hours and continue working towards her independence."
- Also, on February 20, 2019, St. Madeline's notified SDRC that claimant's mother had contacted St. Madeline's to enroll claimant, but that St. Madeline's requested that claimant tour again and restart the process from the beginning.
- Claimant's mother advised SDRC by email on March 1, 2019, that claimant was scheduled to begin a day program at St. Madeline's in May of 2019.
- However, on April 29, 2019, SDRC learned from St. Madeline's that because claimant's IPP stated she had "AWOLS," did not always listen, and had Tourette's, that St. Madeleine's AC program was not going to accept her.
- St. Madeleine's sent an email to SDRC, dated June 20, 2019, which stated: "[W]e would be happy to meet with the family and SDRC whenever is

convenient for everyone to figure out what the next step would be for her daughter. If we do meet, the mother should not take that meeting to be an automatic approval for her daughter to come to SMSC but would be the next step to her possibly coming. If everyone was in agreement with her possibly coming to SMSC at this meeting, then there would be at least 1 more official intake meeting held at least 2-4 weeks to [sic] her daughter starting.”

- When SDRC suggested in June 2019 that another meeting be scheduled with St. Madeleine’s, claimant’s mother indicated she did not want to meet and instead wanted to only communicate by email.¹³

Recent Communications Between the Parties Regarding the Status of Claimant’s Living Situation

50. On May 29, 2019, claimant’s mother emailed SDRC regarding the status of claimant’s plan to eventually live independently. In that email, claimant’s mother wrote:

Last month, I purchased myself a mobilhome [sic] in [location]. I have been transferring my things slowly to see if [claimant] could withstand the change. I transferred [claimant] into my large master bedroom and the ILS workers have been a tremendous help in facilitating this process. I still don’t know if this would be a good fit for my

¹³ Claimant’s mother also accused St. Madeleine’s of discriminating against her daughter.

daughter, but I have been making attempts in good faith to make her independence happen. I sleep on the futon there in another room sometimes. This pas [sic] memorial day [sic] weekend was used to move all my belongings to my new home.

The current ILS worker has begun to take [claimant] into her job and is also a career coach. Its [sic] all very adorable.

I continued to hire the ILS workers at \$15/hour during the past two months and requested payment from SDRC directly to them to no avail.

We are awaiting the results of the ILS assessment, but SLS may come to have a part, in spite of our wishes to wait for section 8 HUD to kick in.

51. On May 30, 2019, SDRC sent an email to claimant's mother which asked the following questions:

1. Have you moved from your current residence? If so, please provide your new address for our records.

2. Did [claimant] move with you?

3. What ILS workers are helping facilitate the move?

4. Did [claimant] secure a job, volunteer opportunity, or some other form of program?

52. On June 13, 2019, claimant's mother wrote to SDRC and requested an IPP meeting "to discuss the ILS assessment and the SLS services for my daughter, [claimant]."

53. An annual review of claimant's IPP was conducted on July 3 and 17, 2019, at the National City SDRC office as opposed to claimant's home. Claimant was then in the process of transitioning to the Self Determination Program. During the July 2019 IPP review, it was reported to SDRC that claimant had two roommates who provided IHSS services, and each of them contributed \$400 per month for rent. Claimant was receiving 75 hours per month of IHSS. Claimant's brother and sister were also reported to sometimes live in claimant's home and sometimes live on their own. Although claimant's mother stated that she was in the process of moving out of claimant's home, she also stated that she needed to continue living with claimant for claimant's safety because claimant had recently walked about a mile away from home to the store and required prompting and assistance completing her self-care and household chores. Claimant was not then attending a day program or participating in supported employment or other services. It was also reported that claimant planned to participate in St. Madeleine's Adult Day Center and possibly transition to St. Madeleine's Activity Center if she did well. Claimant had been helping a neighbor make food deliveries for Postmates for two months, and the neighbor gave her \$2 per day from tips. Claimant was interested in working as a cashier, babysitter, and/or pet sitter. It was anticipated that claimant's goals would be developed in the area of supported living services.

Letter from Claimant's Physician

54. Claimant's physician wrote a letter dated July 30, 2019, which stated:

This letter it to inform that this patient has been under my care since January 2019 and that she is compliant with her treatment. It is my understanding that for the past year my patient received 140 monthly hours of Independent living services (ILS). I am recommending the continuance of the same level of ILS in order for patient to gain further independence and prevent regression of Symptoms. This form is not to confirm independence but for continuance of ILS and respite hours until client is self-sufficient and fully supported.

55. There was no evidence presented that this physician understood the specific ILS services claimant received, nor was there any evidence explaining which “symptoms” he believed might regress.

Wages Claimant’s Conservator Paid After Unlimited Options Ceased Providing ILS Services

56. Claimant’s mother has paid Cielo Perez and Guilliermina Bahena¹⁴ to provide services to claimant since Unlimited Options stopped providing ILS services.

¹⁴ Ms. Bahena also goes by the name “Gigi” and is the same “Gigi” ILS vendors declined to hire.

57. In a handwritten note, Ms. Bahena stated that she received \$500 per week during April 2019 and part of May 2019. She described her work as follows¹⁵:

I showed [claimant]:

To clean and wash and cook and shake (dust) also. To throw the trash away and on Wednesday to take the trash out to the street so that the garbage trucks can take it. She washes her clothes but she misses the part to put the soap in.

58. According to a notarized letter from Ms. Perez, she has been providing services to claimant since April 2019, when Ms. Perez was trained by Ms. Bahena. Ms. Perez stated that she was paid \$500 per week for two weeks in April and an average of \$500 per week in May and June 2019. Although there was no evidence presented regarding what Ms. Bahena trained Ms. Perez to do, claimant's mother presented handwritten documents with Ms. Perez's first name written at the top that appeared to list things claimant did during the day, such as showering, making her bed, washing her clothes, preparing food, and eating. The notes also indicated that claimant assisted Ms. Perez pick up and deliver Postmates's food orders. Claimant submitted a check for \$260 written to "Cielo," dated June 28, 2019. No other checks were offered as evidence.

¹⁵ Her letter was translated from Spanish to English by the Office of Administrative Hearings.

Claimant's Mother's Hearing Testimony

59. Claimant's mother believed that certain SDRC service coordinators treated claimant unfairly and were trying to deny claimant services. At the same time, she did not dispute that the plan had been to provide claimant ILS services to help her prepare to someday live independently, at which point she would receive SLS services.

60. Claimant's mother bought a new home, but she has not actually moved out of claimant's home yet. Claimant has moved into the master bedroom, and claimant's mother has stayed in another room. Claimant's mother has been pretending to not live there to see if claimant could handle living alone. According to claimant's mother, when claimant woke up in the morning, she would think her mother did not sleep there even though she had. Claimant's mother did not believe claimant was ready to live on her own yet due to safety concerns. She also testified that claimant's doctor would not support claimant living on her own.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. "[A] party has the burden of proof as to each fact the existence of which or nonexistence of which is essential to the claim for relief or defense he is asserting." (Evid. Code, § 500.) In this case, SDRC has the burden of proving that the ILS and respite service hours SDRC previously approved should be reduced. Claimant has the burden of proving that she should be reimbursed for wages paid to independent workers.

2. The standard of proof is a preponderance of the evidence. (Evid. Code, § 115.)

3. "'Preponderance of the evidence means evidence that has more convincing force than that opposed to it.' [Citations.]" (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325.) "The sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant." (*Ibid.*, italics in original.) "If the evidence is so evenly balanced that you are unable to say that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it [citation]." (*People v. Mabini* (2001) 92 Cal.App.4th 654, 663.)

Statutory and Regulatory Authority¹⁶

4. The Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq., governs the state's responsibilities to persons with developmental disabilities.

5. Welfare and Institutions Code section 4501 states:

The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them

¹⁶ Some of the Welfare and Institutions Code sections submitted by SDRC during the hearing were outdated versions that did not include recent amendments. The current versions of the Welfare and Institutions Code and regulations were considered when rendering this decision.

which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors, and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance.

The complexities of providing services and supports to persons with developmental disabilities requires the coordination of services of many state departments and community agencies to ensure that no gaps occur in communication or provision of services and supports. A consumer of services and supports, and where appropriate, his or her parents, legal guardian, or conservator, shall have a leadership role in service design.

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities. . .

6. Welfare and Institutions Code section 4502.1, subdivision (a), states:

The right of individuals with developmental disabilities to make choices in their own lives requires that all public or private agencies receiving state funds for the purpose of serving persons with developmental disabilities, including, but not limited to, regional centers, shall respect the choices made by a consumer or, if appropriate, the consumer's parents, legal guardian, conservator, or authorized representative. Those public or private agencies shall provide consumers with opportunities to exercise decisionmaking [*sic*] skills in any aspect of day-to-day living and shall provide consumers with relevant information in an understandable form to aid the consumer in making his or her choice.

7. The services and supports provided to persons with disabilities are defined by Welfare and Institutions Code section 4512, subdivision (b), as follows:

"Services and supports for persons with developmental disabilities" means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, and normal lives. The determination of which services and supports are necessary for each consumer shall be made through the

individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, physical, occupational, and speech therapy, training, education, supported and sheltered employment, mental health services, recreation, counseling of the individual with a developmental disability and of his or her family, protective and other social and sociolegal services, information and referral services, follow-along services, adaptive equipment and supplies, advocacy assistance, including self-advocacy training, facilitation and peer advocates, assessment, assistance in locating a home, child care, behavior training and behavior modification programs, camping, community integration services, community support, daily living skills training, emergency and crisis intervention, facilitating circles of support, habilitation, homemaker services, infant stimulation programs, paid roommates, paid neighbors, respite, short-term out-of-home care, social skills training, specialized

medical and dental care, telehealth services and supports, as defined in Section 2290.5 of the Business and Professions Code, supported living arrangements, technical and financial assistance, travel training, training for parents of children with developmental disabilities, training for parents with developmental disabilities, vouchers, and transportation services necessary to ensure delivery of services to persons with developmental disabilities. Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

8. Welfare and Institutions Code section 4646, subdivisions (a), (b), (d), and (e), explain:

(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, when appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the

goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

(b) The individual program plan is developed through a process of individualized needs determination. The individual with developmental disabilities and, when appropriate, the individual's parents, legal guardian or conservator, or authorized representative, shall have the opportunity to actively participate in the development of the plan.

[¶] . . . [¶]

(d) Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, when appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.

(e) Regional centers shall comply with the request of a consumer or, when appropriate, the request of the consumer's parents, legal guardian, conservator, or authorized representative, that a designated representative

receive written notice of all meetings to develop or revise the individual program plan and of all notices sent to the consumer pursuant to Section 4710. The designated representative may be a parent or family member.

9. According to Welfare and Institutions Code section 4646.4, subdivision (a):

(a) Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports when appropriate. . . .

(3) Utilization of other services and sources of funding as contained in Section 4659. . . .

10. Pursuant to Welfare and Institutions Code section 4648, subdivision (a)(1), (2), (3), and (7):

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities, including, but not limited to, all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities to achieve the greatest self-sufficiency possible and to exercise personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports that would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

(2) In implementing individual program plans, regional centers, through the planning team, shall first consider services and supports in natural community, home, work, and recreational settings. Services and supports shall be

flexible and individually tailored to the consumer and, if appropriate, the consumer's family.

(3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from an individual or agency that the regional center and consumer or, if appropriate, the consumer's parents, legal guardian, or conservator, or authorized representatives, determines will best accomplish all or part of that consumer's program plan.

(A) Vendorization or contracting is the process for identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service.

(B) A regional center may reimburse an individual or agency for services or supports provided to a regional center consumer if the individual or agency has a rate of payment for vendored or contracted services established by the department, pursuant to this division, and is providing services pursuant to an emergency vendorization or has completed the vendorization procedures or has entered into a contract with the regional center and continues to comply with the vendorization or contracting requirements. The director shall adopt regulations governing the vendorization process to be utilized by the department,

regional centers, vendors, and the individual or agency requesting vendorization.

(C) Regulations shall include, but not be limited to: the vendor application process, and the basis for accepting or denying an application; the qualification and requirements for each category of services that may be provided to a regional center consumer through a vendor; requirements for emergency vendorization; procedures for termination of vendorization; and the procedure for an individual or an agency to appeal a vendorization decision made by the department or regional center. . . .

[¶] . . . [¶]

(7) A service or support provided by an agency or individual shall not be continued unless the consumer or, if appropriate, the consumer's parents, legal guardian, or conservator, or authorized representative, including those appointed pursuant to subdivision (a) of Section 4541, subdivision (b) of Section 4701.6, or subdivision (e) of Section 4705, is satisfied and the regional center and the consumer or, if appropriate, the consumer's parents or legal guardian or conservator agree that planned services and supports have been provided, and reasonable progress toward objectives have been made.

11. Welfare and Institutions Code section 4688.05 provides the following regarding ILS services:

Regional centers shall provide independent living skills services to an adult consumer, consistent with his or her individual program plan, that provide the consumer with functional skills training that enables him or her to acquire or maintain skills to live independently in his or her own home, or to achieve greater independence while living in the home of a parent, family member, or other person.

12. Welfare and Institutions Code section 4690.2, subdivision (a), defines “[i]n-home respite services” as:

[I]ntermittent or regularly scheduled temporary nonmedical care and supervision provided in the client’s own home, for a regional center client who resides with a family member. These services are designed to do all of the following:

- (1) Assist family members in maintaining the client at home.
- (2) Provide appropriate care and supervision to ensure the client’s safety in the absence of family members.
- (3) Relieve family members from the constantly demanding responsibility of caring for the client.
- (4) Attend to the client’s basic self-help needs and other activities of daily living including interaction, socialization,

and continuation of usual daily routines which would ordinarily be performed by the family members.

13. California Code of Regulations, title 17, section 50612, subdivisions (a) and (b), provide:

(a) A purchase of service authorization shall be obtained from the regional center for all services purchased out of center funds. This requirement may be satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt.

(b) The authorization shall be in advance of the provision of service, except as follows:

(1) A retroactive authorization shall be allowed for emergency services if services are rendered by a vendored service provider;

(A) At a time when authorized personnel of the regional center cannot be reached by the service provider either by telephone or in person (e.g., during the night or on weekends or holidays);

(B) Where the service provider, consumer, or the consumer's parent, guardian or conservator, notifies the regional center within five working days following the provision of service; and

(C) Where the regional center determines that the service was necessary and appropriate.

Evaluation

14. Beginning in 2017, based on claimant's goals to participate in an adult day program and live on her own, SDRC approved ILS and respite services to help claimant transition to live independently. During late 2017 and early 2018, SDRC gradually increased the number of monthly ILS and respite hours and eventually approved 140 ILS service hours per month and 100 respite hours per month. On November 19, 2018, SDRC met with claimant and her mother to review claimant's IPP outcomes. During that meeting, claimant was living with her mother and had not been enrolled in a day program. Claimant's goals still included enrolling in an adult day program and living independently. SDRC agreed on November 19, 2018, to continue funding 140 ILS service hours per month and 100 hours of respite per month.

RESPITE HOURS

15. During the November 19, 2018, meeting, SDRC conducted an assessment to determine the number of respite hours claimant needed. A chart on the assessment form indicated that, based on claimant's score on that assessment tool, the amount of respite hours should be 40 hours per month. The chart also noted that additional hours might be appropriate based on an individual's needs and regional center manager approval. SDRC's East County Regional Manager attended the November 19, 2018, meeting when SDRC agreed to continue funding 140 monthly ILS service hours and 100 monthly respite hours. Therefore, it is reasonable to infer that a SDRC regional manager approved continuing to fund 100 hours of respite services per month at the time of the November 19, 2018, meeting. No evidence was presented to show that

claimant's circumstances have changed since November 2018 to warrant reducing the respite hours. At the time of the hearing, claimant still lived with her mother, still needed constant supervision due to her inability to appreciate dangerous situations, and she still had not been enrolled in an adult day program. She was not ready to live independently. As such, SDRC failed to prove by a preponderance of the evidence that the number of respite hours should be reduced.

ILS HOURS

16. During 2017 and 2018, although ILS vendors prepared ISPs and recommended goals to achieve, those vendors did not assess or recommend a specific number of ILS hours. In May 2019, DK, a vendor claimant's mother had chosen to provide ILS services, conducted an assessment and determined that 27 hours per month of ILS services were warranted, but DK declined to provide the services. Claimant obtained an assessment from another vendor, ACC. However, while ACC's report stated that the ILS services should remain at 140 hours per month, ACC's report did not independently calculate the ILS service hours needed and ACC's report did not explain why the hours should remain at 140 hours per month. ACC's report also recommended that a BCBA provide specific hours of training for claimant's service providers and family members and a BCBA provide 28 hours per month of direct services to claimant.¹⁷ The DK assessment is given greater weight than the ACC assessment because the DK assessment focused on and calculated the necessary ILS hours, whereas the ACC assessment did not. Therefore, based on the evidence

¹⁷ As noted above, there was no evidence presented that the additional services ACC recommended were ever considered or denied by SDRC.

presented, SDRC has met its burden of proof and established by a preponderance of the evidence that the ILS hours should be reduced to 27 hours per month.

THE GAP IN ILS SERVICE HOURS

17. While funding ILS and respite services, SDRC encountered some problems gaining access to claimant and her home to assess the services she was receiving. Therefore, in February 2019, SDRC notified claimant's mother in two letters that claimant's case would be inactivated if claimant's mother did not agree to a meeting at claimant's home with claimant, claimant's mother, SDRC representatives, and the service providers. Despite the threatening tone of SDRC's letters, SDRC did not inactivate claimant's case.

18. In the meantime, in Late February 2018, ILS service provider Unlimited Options gave notice to SDRC and claimant's mother that Unlimited Options would no longer continue providing services. Claimant's mother notified SDRC in March 2019 that claimant had chosen a new ILS provider, TLC, and SDRC promptly sent information to TLC to coordinate TLC providing ILS services to claimant. However, while that provider was considering whether to accept the assignment, claimant's mother advised SDRC that claimant wanted to use a different provider, DK. DK questioned how the number of ILS hours had been established and recommended performing an assessment, and SDRC asked DK to conduct such an assessment. Upon completing that assessment in May 2019, DK notified SDRC that DK had decided it would not to accept the assignment to provide ILS services to claimant.

REQUESTED REIMBURSEMENT FOR CLAIMANT’S MOTHER’S PAYMENTS TO OTHERS AFTER UNLIMITED OPTIONS STOPPED PROVIDING ILS SERVICES

19. Between the time Unlimited Options ceased providing services and the hearing, neither of the two SDRC vendors claimant’s mother had chosen agreed to provide ILS services, and claimant paid two workers, including an individual who SDRC’s ILS vendors (TLC and Unlimited Options) had previously declined to hire, to provide services at the rate of \$500 per week. Claimant requested an order requiring SDRC to reimburse her mother the funds she had paid to these two workers. SDRC never preapproved either of those individuals to provide such services to claimant, and there was no evidence presented to show they were SDRC vendors. Pursuant to California Code of Regulations, title 17, section 50612, subdivisions (a) and (b), SDRC may not fund services that were not approved in advance unless certain emergency exceptions apply. The fact SDRC vendors decided to discontinue or declined to provide ILS services to claimant is not among the exceptions contained in the regulation requiring SDRC’s preapproval. Claimant failed to prove by a preponderance of the evidence that SDRC should be required to reimburse her mother for the work those individuals performed. Accordingly, claimant’s request for reimbursement of funds paid to independent workers is denied.

ORDER

1. No additional documentation is necessary to render this decision (Issue 6).
2. SDRC did not inappropriately discontinue funding ILS in March 2019 (Issue 1).

3. The number of hours of SDRC funded ILS services shall be reduced from 140 hours per month to 27 hours per month (Issues 2 and 4).

4. Claimant's request for reimbursement of funds her mother and conservator paid to independent workers is denied (Issue 3).

5. Respite services shall not be reduced, and SDRC shall continue to fund 100 hours of respite per month. The number of respite hours may be reassessed if and when claimant's circumstances change, including if and when she is enrolled in an adult day program (Issue 5).

This decision is without prejudice to claimant asking SDRC to consider funding the additional services recommended in the ACC assessment claimant presented as evidence.

DATE: October 15, 2019

THERESA M. BREHL
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.